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BEYOND SKILLS TRAINING, REVISITED: THE CLINICAL EDUCATION SPIRAL

CAROLYN GROSE*

ABSTRACT

What is clinical pedagogy today, and where does it belong in the law school curriculum? This article considers these questions, and, in so doing, reflects on fundamental questions about the essence of clinical pedagogy. Part One explores what consensus exists about the goals and methods of clinical pedagogy. Part Two describes the author's own pedagogy in a traditional "doctrinal" course (Estates and Trusts), identifying her dominant goals and methods and their overlap with those identified in Part One as "clinical." Part Three identifies those goals and methods that remain "purely" clinical – those that really cannot be used effectively in anything but a traditional clinic course.

The piece concludes that the traditional clinic is the pinnacle of the legal education pyramid, and that, as such, the rest of the law school curriculum must build toward it. As a student moves through the curriculum, she continues folding in her experiences with "clinical" methods and goals, including role assumption and critical thinking and deconstructing the lawyering process. As she does so, her confidence grows, along with her ability to take risks and exercise professional judgment. By the time she gets to the clinic, she is ready to fully assume the role of a [student] lawyer, and embark on live-client representation. The student can focus on what is best taught and learned only in the clinic: actual experience participating in the lawyer-client relationship.

With this model, the foundation and many layers of the pyramid have been built by the time the student gets to the clinic. That means the clinical teacher doesn't have to build it in his clinic. He gets to work with students at a much higher point in Bloom's taxonomy of learning and is thus free to focus on those goals and methods best, if not exclusively, used in the clinic – the intricacies of the lawyer-client relationship deconstructed and experienced and reflected upon in real

* Professor, William Mitchell College of Law. Thanks to the chairs and members of the Planning Committee for the 2011 AALS Clinical conference A.K.A. "the Seattle Seven": Elliott Milstein, Amy Applegate, Bryan Adamson, Donna Lee, Barbara Schatz, and Liz Cooper, for creating and sustaining the environment for my ongoing exploration. Thanks also to Margaret Johnson, Binny Miller and Claudia Grose for their close reading and editorial support; to my excellent William Mitchell research assistants: Kate Zerwas Graham and Frances Kern; and to William Mitchell for its ongoing support of this project, and of innovative teaching and learning in general.

time, in real life. That is true maximization of student learning and clinical pedagogy.

INTRODUCTION

One day in late September, 2010, I boarded a D.C.-bound plane in St. Paul, MN to begin what would be a nine-month adventure of planning the 2011 AALS Clinical Conference. Elliott Milstein and Amy Applegate were the chairs; I was joined on the committee by Bryan Adamson, Donna Lee, Barbara Schatz, and Liz Cooper. This meeting was the official beginning of a conversation I had been having informally with many members of the committee, and other colleagues since I began clinical teaching, in 2003.

What could I add to this planning process, to this incubation period that would lead to a clinical conference on curriculum reform and the role of the clinic therein? What do I, as a member of today's ever-growing flock of clinical teachers and scholars¹ contribute to the foundation of clinical pedagogy? What do I add to it, how do I embrace it in a different way, where do I offer critique and alternatives to it?

This article continues that conversation.

As I engaged in the planning process and in the work of curricular reform at my own law school, I found myself spiraling around questions about the essence of clinical pedagogy. What is it? What are its goals? What are its methods? Which, if any, of these goals and methods are unique to what has come to be considered "pure" clinical pedagogy, and therefore best (if not exclusively) used in "pure" clinical courses?²

Negotiating this spiral over the course of a year and then some, I have come to believe that as a clinical teacher and scholar, I bring two things to today's clinical pedagogy. First, I offer a concrete identification of purely clinical goals and methods – that is, those goals and methods that are best, if not exclusively, taught in a traditional law school clinic. And second, I offer suggestions for how to embed those other goals and methods in the rest of the curriculum – starting in the first year.

My journey around the spiral forms the basis for this article.³ Part

¹ At the most recent AALS Clinical Conference, there were over 500 attendees. Email from Jane M. La Barbera, Managing Dir., Am. Ass'n of Law Sch., to research assistant (July 24, 2012, 18:49 CST) (on file with author).

² By this, I mean the small, direct representation clinic taught by a member of the law school faculty as an academic offering on the law school campus. These clinics include litigation, individual representation clinics and transactional clinics.

³ A note about the "spiraling" metaphor, which I use both in homage to Phyllis Goldfarb's work in *A Theory-Practice Spiral*, 75 MINN. L. REV. 1599 (1991), and to build on my previous work which suggests that the "spiraling theory" of learning is a better model than

One explores what consensus exists about the goals and methods of clinical pedagogy. Part Two describes my own pedagogy in a traditional “doctrinal” course (Estates and Trusts), identifying my dominant goals and methods and their overlap with those identified in Part One as “clinical.” Part Three identifies those goals and methods that remain “purely” clinical – those that really cannot be used effectively in anything but traditional clinic courses. The article concludes with proposed answers to the questions raised above, and a description of what my analysis might mean for the future of clinical pedagogy and the broader law school curriculum.

A word, here, about metaphors: I rely on two distinct images throughout this piece – the spiral and the pyramid. The spiral describes my journey within the goals and methods of clinical pedagogy, and my process for interweaving those goals and methods into all of my teaching. The pyramid, on the other hand, describes not a process but a thing: legal education. In this piece, I propose an image of legal education with a solid and broad base that supports a student’s striving toward toward a pinnacle – the gleaming triangle of a clinical experience. These two metaphors might not work particularly well together – my editor, for example, imagined Egyptian slaves spiraling up the ancient pyramids as they were being built. But individually, they capture, for me, the essence of clinical pedagogy, and its place in a more intentionally crafted system of legal education.

I. WHAT IS CLINICAL PEDAGOGY

A. Introduction

Despite my 12 years of teaching experience, many of them in the clinic; and my two years of clinical experience as a student in law school, I felt the need to delve deeply into the annals of clinical pedagogy and scholarship in order to excavate a clear description of the goals and methods of clinical pedagogy. As the footnotes attest, I read a lot; from Jerome Frank⁴ to Gary Bellow⁵ to Margaret Johnson.⁶

a “parachuting in” model. See, e.g., Carolyn Grose, *Storytelling Across the Curriculum: From Margin to Center, from Clinic to the Classroom*, 7 J. ASS’N LEGAL WRITING DIRECTORS 37, 49 (2010) available at <http://www.alwd.org/LC&R/CurrentIssues/2010/pdfs/grose.pdf>.

⁴ See generally Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947) (bemoaning the Langdellian state of law schools, stressing the value of observation of trials and law offices in legal education, and advocating law clinics as the core of the law school); Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933) (describing the case method of legal instruction as “hopelessly oversimplified” and proposing sixteen modifications to improve law school education, including the creation of a law school legal clinic).

⁵ See generally Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections*

I combed the pages of the Clinical Bibliography⁷ and reread the old classics.⁸

Not surprisingly, this research – fun and educational as it was — resulted in no such “clear description” of the goals and methods of clinical pedagogy. Instead, I gathered a rather diffuse consensus.

In describing this consensus in the sections below, I differentiate between what I call clinical “goals” – that is what the clinic is trying to do/accomplish/achieve; and clinical “methods” – how the clinic or clinical teacher reaches those goals.⁹ Obviously, this can be an arbitrary line, and often goals become methods and vice-versa. Particularly in light of the recent focus on “backward design”¹⁰ and outcomes-based education,¹¹ and because I tend to organize my teach-

on *Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT 374 (1973) (distinguishing the methodology of clinical education from its objectives, describing clinical education's main components, and considering clinical education's potential as “an educational vehicle” in the study of law); Gary Bellow & Randy Hertz, *Clinical Studies in Law*, in LOOKING AT LAW SCHOOL 340 (Stephen Gillers ed., 4th ed. 1997) (outlining the clinician's perspective on legal education and the role of clinics and discussing the practical difficulties of implementing clinical education in the contemporary law school).

⁶ See generally Margaret Martin Barry, A. Rachel Camp, Margaret E. Johnson, Catherine F. Klein, & Lisa V. Martin, *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLINICAL L. REV. 401 (2011) (discussing the role community legal education plays in clinical legal education, examining two clinics in particular, and identifying challenges that community legal education projects present); Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161 (2005) (discussing the application of certain critical theories to two clinical legal education courses).

⁷ J.P. Ogilvy with Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography*, 12 CLINICAL L. REV. 1 (2005).

⁸ See, e.g., Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLINICAL L. REV. 1 (1997); David F. Chavkin, *Fuzzy Thinking: A Borrowed Paradigm for Crisper Lawyering*, 4 CLINICAL L. REV. 163 (1997); Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1994). These are just my version of “the classics” of course, based on my own exposure during law school and my multi-year apprenticeship thereafter.

⁹ Also, a note about what I am not addressing herein, what has come to be called, by some, “clinical jurisprudence”. Most recently described by Ann Shalleck and Muneer Ahmad, this is the body of scholarship and pedagogy that rests on the idea that law is made in the counseling/collaboration between lawyers and their clients. Ann Shalleck & Muneer Ahmad, *Toward a Jurisprudence of Clinical Thought* (forthcoming 2013) (manuscript at 11–12) (on file with author).

¹⁰ See, e.g., GRANT WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN (1st ed. 2001); Carolyn Grose, *Outcome-Based Education One Court at a Time: My Experiment with Trusts and Estates*, 62 J. LEGAL EDUC. 336 (2012).

¹¹ See generally GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS (2000) (advocating the adoption of an outcomes-based assessment program in law schools, defining outcomes assessment, and providing a blueprint for implementing outcomes assessment within a greater law school curriculum and individual courses); ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION (2007) (urging reform in legal education and outlining seven best practices for so doing); WILLIAM M. SULLIVAN ET AL.,

ing in this way, I find the distinction a useful one in analyzing the questions I have raised.

B. Goals

Reflecting on the scholarship of and about clinicians written over the past decades, I offer the following in response to the question, “What do we do that transcends skills training for lawyers?”¹² The bottom line is that clinical pedagogy aims to teach students to approach lawyering as a theory-driven practice, framing each activity with intentionality and reflection.¹³

More specifically, clinical education has three broad goals: providing learning for transfer; exposing students to issues of social jus-

EDUCATING LAWYERS 162–84 (2007) (examining current law school assessment models and proposing a model of teaching based on faculty understanding of the goals of student learning); Blake D. Morant, *The Declining Prevalence of Trials as a Dispute Resolution Device: Implications for the Academy*, 38 WM. MITCHELL L. REV. 1123, 1132–36 (2012) (advocating adoption of problem-solving skills throughout the law school curriculum and describing several examples of how the author has done so in his own classroom).

¹² See generally John S. Bradway, Cleon H. Foust, Nellie MacNamara, David E. Snodgrass, & G. Kenneth Reiblich, Chairman, *Legal Clinics for Law Students—A Symposium*, 7 J. LEGAL EDUC. 204, 214 (1954) (“The function of a legal aid clinic course appears to be twofold: to develop in a young law student some of the sophistication in dealing with clients supposedly possessed by the apprentice-trained young lawyer of the early nineteen hundreds, and to increase the confidence of the public in the capabilities of the young lawyer to solve the legal problems of the ordinary man.”). But see Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327 (2001) (arguing the clinic should promote social justice in addition to providing skills training).

¹³ Association of American Law Schools, Section on Clinical Legal Education, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 511, 517 (1992) (identifying nine goals of clinical education and expressing the wish that clinicians and law students take the goals of clinical education to heart); David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 N.Y.L. SCH. L. REV. 87, 89–91, 124 (1990) (positing ten “primary clinical themes,” noting the value choices that underlie these themes); Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 12, 16–18 (2000) (noting that the earliest forms of clinical education embraced the view that “students must learn about the law as a means to an end rather than as an end itself[]”); Stephen F. Befort, *Musings on a Clinic Report: A Selective Agenda for Clinical Legal Education in the 1990s*, 75 MINN. L. REV. 619, 624–25 (1991) (“[C]linical education is not an amalgamation of goals, but a distinct pedagogical method. . . . that allows legal educators to examine the dynamics of the lawyer-client relationship from within the relationship itself.”); Bellow, *supra* note 5, at 395–97 (identifying purposes of the clinic as including “learning to learn”); Ann Marie Cavazos, *The Journey Toward Excellence in Clinical Legal Education: Developing, Utilizing, and Evaluating Methodologies for Determining and Assessing the Effectiveness of Student Learning Outcomes*, 40 SW. L. REV. 1 (2010); Norman Fell, *Development of a Criminal Law Clinic: A Blended Approach*, 44 CLEV. ST. L. REV. 275, 279 (1996); Elliott S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. LEGAL EDUC. 375, 378–81 (2001) (identifying goals of the legal clinic, including “theory-driven preparation and advocacy” and “reflective practice”); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 471–72 (1995).

tice; and offering opportunities to practice lawyering skills. I discuss each of these goals below.

1. *Learning For Transfer*

Clinical pedagogy aims to teach students how to learn. This is distinct from teaching students how to “think like a lawyer” – which is, for many, the goal of most first year courses. Bill Quigley, for example, contrasts clinical education to passive teaching methods, such as the “‘banking’ concept of education” where students are seen as empty vessels into which teachers pour their knowledge.¹⁴ Put another way, Kim O’Leary describes the goal of a clinical course as “engag[ing] the student in the process of learning and understanding how the learning process takes place.”¹⁵ The result is that “students transform into self-learners [and] teachers become reflective self-evaluating transformative agents of education”¹⁶

Embedded in this goal is what has come to be called “learning for transfer;”¹⁷ the ability to generalize from lessons and skills gathered in one place and circumstances and transfer such lessons and skills to a different set of circumstances. Many suggest that this is the heart of clinical pedagogy.¹⁸ It is certainly the theoretical base of what we now call clinical pedagogy.

¹⁴ Quigley, *supra* note 13, at 474.

¹⁵ Kimberly E. O’Leary, *Evaluating Clinical Law Teaching—Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. KY. L. REV. 491, 510 (2002).

¹⁶ Quigley, *supra* note 13, at 474; accord Rose Voyvodic, “Considerable Promise and Troublesome Aspects”: *Theory and Methodology of Clinical Legal Education*, 20 WINDSOR Y.B. ACCESS TO JUST. 111, 128 (2001) (describing a goal of pedagogical theory as fostering students who “have learned how to learn”).

¹⁷ See Sharan B. Merriam & Brendan Leahy, *Learning Transfer: A Review of the Research in Adult Education and Training*, 14 PAACE J. LIFELONG LEARNING 1, 3–5 (2005) (presenting several definitions and models of learning transfer); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 366 (2001) (“[A] core goal of all instruction is transfer, which learning theorists define as ‘the application of learned knowledge in new ways or situations.’”) (citation omitted). See generally Cathy Down, *Learning for Transfer: A Theory of Situational Learning*, in RESEARCH TO REALITY: PUTTING VET RESEARCH TO WORK 1 (Australian Vocational Education and Training Research Association ed., 2001), available at <http://www.eric.ed.gov/PDFS/ED456271.pdf> (describing the results of research on learning for transfer and proposing a model of it).

¹⁸ ASS’N OF AM. LAW SCHS., CONFERENCE ON CLINICAL LEGAL EDUCATION CONFERENCE BOOKLET, 35–36 (2011) (summarizing a conference session dealing with teaching for transfer in the clinic); Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 279, 298–99 (2012) (noting clinics’ role in teaching students a method of ongoing reflection that will enable them to use their experiences in their future practice); Tonya Kowalski, *True North: Navigating for the Transfer of Learning*, in *Legal Education*, 34 SEATTLE U. L. REV. 51, 82 (2010) (noting how clinics promote educational methods essential to good transfer of learning).

Elliott Milstein and Bob Dinerstein describe this task as helping students to “see the connection between their lawyering experiences in clinic and those they will encounter throughout their careers, to treat each insight they have as a lesson potentially generalizable to other lawyering situations”¹⁹ Clinical teachers guide their students to reflect on how one interview, for example, is similar to other interviews, and, therefore, what theory about this particular lawyering skill they can extract and apply to other interviews in the future.²⁰

One of the most important applications of this goal of teaching students how to learn is to guide them to recognize choice moments and to be able to make intentional choices in the face of uncertainty.²¹ Simply put, again by Milstein and Dinerstein: “[I]f we are not teaching our students to recognize other choices, we have failed.”²²

2. Social Justice/Critical Thinking

The second broad goal of traditional clinical pedagogy is to teach, or at least expose students to, concepts of social justice.²³

Some might see this goal as one to indoctrinate students into liberal ideas about helping the poor and saving the planet – and indeed some clinics do have some version of these values as their goals. But in fact, the “social justice goal” is much more complex and less doctrinaire than that.

I like to think of the social justice mission of the clinic as twofold: first, to expose students to the underbelly of the legal system, and its place and role in society; and second, to challenge them to think critically about that system and their place in it. Thus, “clinicians attempt to de-stabilize the law school curriculum and legal practice by inculcating a set of skills and values that will permit their graduates to appreciate the benefits of the legal system and law practice while remaining critical of their shortcomings.”²⁴

Or, as Shalleck and Ahmad theorize, “Clinical thought has provided ways to identify, discuss and debate the work of the lawyer in its

¹⁹ Elliott S. Milstein & Robert D. Dinerstein, *Uncertainty, Indeterminacy, and the Clinical Curriculum* 28 (2010) (unpublished manuscript) (on file with author).

²⁰ *Id.*

²¹ For some, within this broad goal of teaching students how to learn is the sub-goal of exposing students to, and having them begin to get comfortable with, indeterminacy in a variety of contexts. Milstein and Dinerstein suggest that “Clinical education’s focus on advocacy for situated clients can help students see that in some cases the indeterminacy of the law can be their friend and not their enemy” *Id.* at 12.

²² *Id.* at 36.

²³ Barry, Dubin, & Joy, *supra* note 13, at 55. Teaching should include a “moral vision” concerning “fairness, accessibility, and justness” Bellow & Hertz, *supra* note 5, at 347.

²⁴ Milstein & Dinerstein, *supra* note 19, at 36.

technical and social aspects.”²⁵ Clinicians “have sought in their work on pedagogy, on lawyering, on social justice to reconstruct. They have acted to create new pedagogical structures, theories and practices within legal education.”²⁶

Of course, in addition to the critical thinking piece, the social justice goal might also include a commitment on the part of the clinic to providing legal services to those whose access to such services is limited.²⁷ And certainly, clinical education emerged in part “from a desire to reconnect students to social justice”²⁸ Some scholars go so far as to say that clinical teachers and lawyers have a duty to ensure that law students are exposed to injustice and understand the role that they may play in either working for or against injustice.²⁹

This duty is by no means universally accepted, however. Indeed, many teachers and clinical scholars question the efficacy of using the clinic primarily as a way to provide legal services to the poor, suggesting that “[a] service orientation by clinical programs can too easily become a rationale for permitting law teaching to slip into vocational, how-to-do-it instruction.”³⁰ This emphasis risks undermining the theory-based goals of critical thinking and learning for transfer.

3. *Skills And Lawyering Process*

The third broad goal of clinical pedagogy is to expose students to and encourage them to deconstruct the work and role of the lawyer, and the lawyering process. This goal has both a skills component and a professional development/values component. Some who write about this merge the two, others treat them as distinct.³¹

²⁵ Shalleck & Ahmad, *supra* note 9, at 12.

²⁶ *Id.* at 47.

²⁷ Barry, Dubin, & Joy, *supra* note 13, at 58–59; Marc Feldman, *On the Margins of Legal Education*, 13 N.Y.U. REV. L. & SOC. CHANGE 607, 638 (1985); Stephen Wizner & Dennis Curtis, “Here’s What We Do”: *Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 673, 678–80 (1980).

²⁸ Evelyn Cruz, *Through the Clinical Lens: A Pragmatic Look at Infusing Therapeutic Jurisprudence into Clinical Pedagogy*, 30 T. JEFFERSON L. REV. 463, 481 (2008).

²⁹ Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1937 (2002).

³⁰ Gary Bellow & Earl Johnson, *Reflections on the University of Southern California Clinical Semester*, 44 S. CAL. L. REV. 664, 670–71 (1971). *But see* Cavazos, *supra* note 13, at 8 (“The primary goal of the in-house clinic is to provide free civil legal services of the highest quality to low-income residents and the underserved community in the most valuable, proficient, and professional manner possible.”); Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks the Spot*, 17 CLINICAL L. REV. 205, 208, 221 (2010) [hereinafter Kosuri, *Generational Crossroads*] (espousing the view that a social justice orientation should be considered but one type of clinical strategy and suggesting that the underlying goals of clinical education “should be conceived without bias for or against an ideological past[]”).

³¹ Bellow & Johnson, *supra* note 30, at 685, 689–92.

Gary Bellow described clinical pedagogy as “a departure from a primary focus in legal education on broadening perspectives and on developing judgment, discipline and intellect.”³² More recently, Milstein and Dinerstein describe the work of clinical teachers to “map out the lawyering process into its component parts and then to propose ideas and theories about what constituted high quality performance of that component.”³³ Thus, clinical teachers expand on the idea that lawyering is a process made up of distinct and related skills and they encourage their students to dig deeper and to recognize “the process that lawyers use of finding the opportunity and space for thinking differently or critically about a legal issue, for stretching or reorienting a standard narrative within and about the law, and for persuading a court to adopt that view.”³⁴

Shalleck and Ahmad describe how clinical pedagogy challenges students to “identify, question and inquire deeply into the complex, embedded practices through which legal rules and doctrines take on meaning in the world through the interpretive activities of lawyers as they engage with clients in understanding their stories and in shaping for and presenting them to the world.”³⁵

4. *A Loose Consensus*

Running through all of these goals – teaching students to learn, engaging them in social justice work, challenging them to deconstruct lawyering process and role – is the thread of critical self-reflection and reflection about the legal system and lawyer. Also woven throughout is the shimmering indeterminacy of facts, law, client, student, teacher, relationship.

Thus, clinical pedagogy not only offers students the opportunity, but in fact requires them, to engage in critical self-reflection and thinking about these issues; whether they are practicing a lawyering skill or struggling with an ethical question or reporting on their client issues. This is what Phyllis Goldfarb describes as the “practice-theory spiral.”³⁶ It is the essence of clinical pedagogy.

B. Methods

There is as much consensus about a description of “clinical methods” as there is about “clinical goals.”³⁷

³² *Id.* at 671.

³³ Milstein & Dinerstein, *supra* note 19, at 30.

³⁴ Shalleck & Ahmad, *supra* note 9, at 25–26.

³⁵ *Id.* at 8.

³⁶ Goldfarb, *supra* note 3.

³⁷ Bellow, *supra* note 5, at 393–94; Carrie Menkel-Meadow, *The Legacy of Clinical*

My understanding of that consensus is that clinical methods consist broadly of three themes: (1) grounding the teaching in the students' case/client work; (2) teaching lawyering as "process" composed of various themes; and (3) giving students multiple opportunities to reflect on their experiences. These three themes are intertwined in the "practice-theory" spiral,³⁸ with (1) as the practice and (3) as the theory. I see number 2 as the heart of "clinical method," comprised as it is of both theory and practice. The themes — comfort with uncertainty, client-centeredness, professional judgment, etc. — are the theory. The practice is the methods we use to teach those themes through examination of the work of the lawyer.

This move from skills to theory and theory to skills is an attempt to prepare students for a future that is not certain; the challenge for all teachers is to transcend the day to day in an attempt to teach more broadly. That is my clinical scholarship as well: I teach about what I write and write about what I teach; my ideas get tested in the classroom. And the beginning point — of the teaching and the scholarship — is always the student's individual frame of reference and his/her own perceptions of the world.

I describe, below, how the three themes — of teaching grounded in casework, examining lawyering as a process, and reflecting on both theory and practice — translate into teaching methods through three concrete techniques/practices: role assumption, advocacy for live clients, and reflection.

1. *Role Assumption And The Situated Student*

There is much written on the value of experiential learning particularly for adult learners.³⁹ And clinics certainly use hands-on experience by students as the basis for their learning: "The single most critical defining element of clinical education is that it is experience-

Education: Theories About Lawyering, 29 CLEV. ST. L. REV. 555, 556, n. 4 (1980) (citing Robert Condlin, *The Myth of the Clinical Methodology*, 2 CLINICAL LEGAL EDUC. PERSP. 9 (1978)).

³⁸ Goldfarb, *supra* note 3.

³⁹ See generally JOHN DEWEY, *EXPERIENCE AND EDUCATION* 20 (1938); MALCOLM S. KNOWLES, *THE ADULT LEARNER: A NEGLECTED SPECIES* 27–65, 109–42 (4th ed. 1990); MALCOLM S. KNOWLES ET AL., *THE ADULT LEARNER* (7th ed. 2011); DAVID A. KOLB, *EXPERIENTIAL LEARNING* 140–45 (1984); Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 333–53 (1982); (discussing andragogy in relation to clinical legal education); Knud Illeris, *What Do We Actually Mean by Experiential Learning?*, 6 HUM. RESOURCES DEV. REV. 85, 94 (2007); Laura Joplin, *On Defining Experiential Education*, in *THE THEORY OF EXPERIENTIAL EDUCATION* 16 (Karen Warren et al. eds., 1995); Peggy Cooper Davis, *The Effects of Experiential Courses on Students' Learning, Emotional Health, and Sense of Professional Responsibility* (Oct. 1, 2010) (unpublished manuscript) (on file with author).

based learning.”⁴⁰ In most clinics, the context in which this experience takes place is the lawyer-client relationship, and the representation of clients by the students, acting in role as the clients’ attorney.

Students are given responsibility for their client matters, with the professors providing a range of supervision and guidance. In many clinics, students are told in no uncertain terms that these cases and clients are “theirs,” not the supervisors’. Students thus act as lawyers, often for the first time in their law school careers.

Indeed, Barry, Dubin, and Joy note that early clinicians saw the clinic as “a ‘case book’—not, however, of dead letters descriptive of past controversies, but always of living issues in the throbbing life of the day, the life the student is now living.”⁴¹ Gary Bellow describes the “central feature of the clinical method [as] its conscious use, both conceptually and operationally, of the dynamics of role adjustment in social life.”⁴² In the clinical experience, the student assumes a role, learns the obligations of the role, recognizes certain cues involved in assuming that role, and ultimately acquires the aptitudes required to perform the role.⁴³

More than simply embodying the role of a lawyer representing clients, however, the clinical method helps students reflect on and learn from that role assumption. Milstein describes the ideal of supervision, for example, as to “[h]elp[] students extract theory from experience, apply theory to solve real-world problems, and revise theory in light of experience”⁴⁴ Thus, clinical teachers and the clinic program aim to start where students are; using their experience in the world as the starting point and reference point.

2. *Advocating For Situated Clients*

But clinics take the concept of experiential learning even farther by teaching the situated student through advocacy for the situated client.⁴⁵ As a method, the clinic “allows legal educators to examine the dynamics of the lawyer-client relationship from within the relationship itself.”⁴⁶

⁴⁰ Quigley, *supra* note 13, at 475; *see also* Barry, Dubin, & Joy, *supra* note 13, at 17. Lawyering skills should be deliberately taught, using a “careful examination of lawyers’ relationships with clients, adversaries, and decision makers, and systematic efforts to develop students’ problem-solving, interviewing, investigating, research, case analysis, negotiating, counseling, advocacy, and alternative dispute resolution skills.” Bellow & Hertz, *supra* note 5, at 346; *see also* Voyvodic, *supra* note 16, at 129.

⁴¹ Barry, Dubin, & Joy, *supra* note 13, at 7.

⁴² Bellow, *supra* note 5, at 380.

⁴³ *Id.*

⁴⁴ Milstein, *supra* note 13, at 377.

⁴⁵ Cavazos, *supra* note 13, at 13.

⁴⁶ Befort, *supra* note 13, at 625.

The student begins to inhabit a new status: "In performing specific legal tasks, students experience feelings of responsibility to others, independence, competency, immediacy, and contribution as members of a professional community."⁴⁷ But they achieve that new status in the context of representing "live" clients. They receive supervised responsibility in the real world to solve real problems. This new personal responsibility and the necessarily accompanying choices about how to use it contextualizes the students' assumption of the lawyering role, and makes it more complicated.⁴⁸

Thus, clinicians work to meet the pedagogical goal of deconstructing and understanding the work of the lawyer by placing students in that role, in the context of representing live clients. They challenge students to extract theory from their practice, and to look to theory to guide their decisions about how to represent their clients. Clinical teachers ask their students to consider what lawyering skills "mean" in the context of their lawyering practice: What is problem-solving? What are its components? How does an effective lawyer respond in the context of this particular client's situation?

This clinical method is the inverse of the traditional case method, which dissects problems presented from casebooks. In clinic, students and teachers build problems together, from facts of clients' situations, and law and policy and other considerations that situations call forth.

3. *Reflection*

The third method of clinical pedagogy, which weaves its way through the other two methods is deliberate and systematic reflection. Reflection is the method that guides students' extraction of theory from practice, and the application of practice to theory; and it pushes students to generalize from the specific and transfer their learning beyond that specific.

The role of the clinical teacher is "to enlist the motivations, impressions, and relationships of role performance in efforts to enhance self-reflection, self-consciousness and a more encompassing understanding of those phenomena of the legal order which are the focus of pedagogic inquiry."⁴⁹

Part of this method involves transparency on the part of the teacher – making her goals and methods explicit to her students. In this way, she models reflection: "We also reinforce the importance of 'naming' our activities and techniques for students so that they are clearly identified for later use. Naming involves giving students

⁴⁷ Feldman, *supra* note 27, at 617.

⁴⁸ Voyvodic, *supra* note 16, at 127.

⁴⁹ Bellow, *supra* note 5, at 387.

frameworks within which they can fit the teachers' questions."⁵⁰

Marc Feldman suggests that student reflection on the clinical experience and its components leads the student to greater "self-consciousness, responsibility, and perceived status."⁵¹ Such self-awareness prepares students for the realities of practice, where they might not have a supervisor, senior partner, or mentor to assist with reflection on performance and practice. Using reflection as a teaching method thus serves the clinical goal of teaching students how to fish.⁵²

4. *What Clinicians Do And Why*

As with clinical goals, all three of these methods – role assumption, advocating for live clients, and reflection – weave among each other, and with the goals they serve. Embedded in all three of these methods are the jurisprudential and pedagogical themes of the clinical movement: indeterminacy, uncertainty, the necessity of making choices about professional role and behavior, the idea that law is made through the interactions of client and lawyer, through interactions of fact and law.

Thus, deconstructing clinical goals and methods helps us understand what clinicians do. We give names to the things we do in order to understand what we do and why we do it. We give names to things in order to make them exist and capable of analysis: a vocabulary that provides definitions.

II. CLINICAL GOALS AND METHODS IN NON-CLINIC CLASSES

I am a clinical teacher who teaches non-clinical classes, Evidence and Estates and Trusts among them. Both courses have the traditional law school course design of large sections – between 55 and 85 students – that meet once or twice a week, with no additional formally scheduled contact between me and the students, or among the students themselves.

Despite this, my training and orientation as a clinical teacher has informed and does inform how I teach my non-clinical courses. In this section, I explore which of the "clinical" goals and methods I have just described can and do transfer into a course and curriculum that is not traditionally considered – and is certainly not designed as – a "clinical" course.⁵³

⁵⁰ Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505, 521 (2012).

⁵¹ Feldman, *supra* note 27, at 616.

⁵² Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 J. LEGAL EDUC. 240, 243, 251 (2009).

⁵³ I have a similar orientation, and comparable goals and methods in my Evidence

My Estates and Trusts syllabus describes the course as follows (I've highlighted the themes/goals/methods I consider "clinical," and will explore further):

*The overarching story of Estates and Trusts law is about **planning for and communicating about** transferring assets and/or decision making and other powers from one person or entity to another person or entity, usually across generations, usually as a result of death or incapacity. This story can be told through the creation and administration of: wills, trusts, nonprobate instruments, guardianships, health care directives, and powers of attorney. The story can also be told through the various laws governing intestate succession, which apply when none of the instruments described above exist. . . .*

*An **Estates and Trusts lawyer, therefore, needs to be able to** identify the various plot lines and characters that might present themselves to him in a client's situation; he must be able to figure out how the relevant law or laws interact with those characters and plot lines, and to **explain that interaction to his client; and he must be able to work with his client to construct a story or stories that meet his client's needs.** This might involve creating one or more of the instruments described above, and/or planning for the implementation of those instruments when necessary. The latter might include defending against challenges to the instrument and/or to the creation or administration of the instrument.*

. . .

*This is an introduction course. When you have completed this course, you should be able to go on to take the Legal Planning Clinic, or an externship or other estate planning apprenticeship. I see this as **a first step toward becoming a competent Estates and Trusts attorney**, as a gateway to the practical experience that will lead to such competence.*

More specifically, after completing the course,

You will have core legal knowledge in Estates and Trusts law:

- *Triggers in estate planning that affect drafting instrument*
- *Difference between probate and nonprobate instruments*

You will understand that:

- *Estates and Trusts law is about assets, relationships, people and their issues, in crisis;*
- ***Your role is to listen to your client, to counsel your client consistent with your client's goals and your knowledge of the law, and to work to implement your client's goals;***
- *You must act ethically in light of relevant legal and non-legal concerns.*

You will be able to:

- ***Gather information and goals from your client***

class, but for the sake of brevity and clarity, I have chosen to focus only on one course in this piece.

- *Conduct research in case law, statutes and relevant secondary authority*
- ***Explain the law and legal options to a client***
- *Begin to put together a comprehensive estate plan*
- *Recognize issues in a will or trust that might raise challenges in the future, and defend against such challenges*
- *Begin to draft a will and trust*

...
*The course is really **designed around the lawyer-client relationship** that might arise in the context of the doctrine we are learning. In each class, students will be asked to do exercises and answer questions designed to get them thinking about **how the doctrine we are learning actually applies in the day-to-day practice of an Estates and Trusts attorney.***⁵⁴

A. Goals

On a very concrete level, I want these students to finish my course and be able to represent clients in an Estate Planning Clinic – interview them, gather information, do legal research relevant to clients' concerns, counsel them, plan a course of action, implement that course of action, which will probably involve drafting documents such as wills, powers of attorney, health care directives, trusts, etc.

I want students to understand the basic doctrine of Estates and Trusts in order to be able to counsel clients at various stages in their process. Depending on who the client is, and the context of her estates and trusts question, the attorney plays a slightly different role, e.g. a planner who counsels a property owner on the creation and execution of an instrument; a litigator who counsels a beneficiary on how a document can be challenged; an advisor who counsels a fiduciary on how a particular provision can be interpreted. I want my students to be able, at the end of my course, to recognize and begin to inhabit these different professional roles, and the tools and expertise they each comprise.

On a more theoretical level, I want the students to be able to consider the client's whole picture – what other resources, documents, professionals might there be to assist this client? What other roles might they as attorneys play in implementing the client's goals? What contextual factors might play a role in the development of the client's story, and how might they as lawyers capitalize on those? How do the client and her goals interact with the dominant legal and cultural stories that drive Estates and Trusts law? How can the lawyer work with those stories in a way that empowers the client and achieves her

⁵⁴ Syllabus, Estates and Trusts Survey, C. Grose, Spring, 2013.

goals?

In short, I want my students to deconstruct and begin to develop skills as client representatives in the field of estate planning. Embedded in this goal are the sub-goals of having students learn to counsel clients, to persuade decisionmakers, and to understand the importance of context. And I want the students to be able to develop their skills as client representatives with an eye toward how those skills necessarily interact with and affect the development of the law and its role in the lives of the people these students represent.

In addition to these “clinical” goals of professional development and critical thinking, I also want my students to learn the doctrine of Estates and Trusts law. In particular I want them to understand how the doctrine informs their ability to construct and implement an estate plan that meets their clients’ goals and will avoid or, if necessary, survive future challenges.

B. Methods

My challenge throughout the semester is always how to connect my presentation of the doctrine to the goals/outcomes of the course. These goals/outcomes must guide the structure of the work we do in the class. Concretely, I use two methods that fit squarely in the “clinical” frame: Role Assumption and Reflection.

Additionally, in each class and with each assignment, I challenge students to frame rules/doctrine in terms of professional identity – asking them what kind of lawyering does this question/issue/rule implicate; and I challenge them to expand that frame to include thick factual narrative — e.g. what are the plot lines here; who are the characters; what is the context?

I have found that these clinical methods work well to help students achieve the clinical goals of professional and skill development and critical thinking; but they also lead students to achieve the “non-clinical” goal of learning the doctrine.

1. Client Narrative

I require my students to engage in one consistent and thematic role-play throughout the semester, namely the lawyering they do in the context of a semester-long creative writing project. As described in the syllabus:

Before each class, you will be asked to write a creative reflection on the reading assigned for the class, organized around a fictional client (of your creation) and her estate planning issues. You will revisit your writing at the end of each class and offer that client concrete advice based on the class discussion.

In addition, during the class, two or three students present their client's story, and their colleagues collaborate with them in determining what they need to do in order to advise the client. I encourage students to stick with the same fictional client and his/her family throughout the semester, but some find it easier and more helpful to invent multiple clients.

Finally, as part of the final project, I ask:

- *How did your client change over the course of the semester?*
- *How did your lawyer/lawyering change over the course of the semester?*
- *How did your approach to the doctrine change as you anticipated having to advise your client?*

Within this exercise, then, are the methods of role assumption, role play, and reflection.

The project came about as I prepared to teach the course for the first time, and found myself asking, "Why would a lawyer ever need to know this? What does a lawyer do with all of this?" The more I imagined the answers to those questions – which for the most part were very simply: counsels clients – the better I understood the particular doctrine.

I chose to challenge the students to make up their own clients rather than to create a hypothetical client for us all to work with because the act of imagining the situation and populating it with clients and contextual details helped in grappling with the doctrine in a more concrete and complex way than simply reading and analyzing problems. So, the creative writing exercise began as a way to help students achieve the outcome of learning the doctrine of estates and trusts, with an eye toward counseling clients.

Thus, I teach the rules – or how to find out what the rules are – and then challenge my students to: perform the legal analysis and critical thinking to figure out how the rules apply to their client; determine whether the rules make sense; understand how they fit with each other; identify what the underlying themes are and how the rules fit or do not fit those themes. I use the client narrative exercise as a way to get students to perform the analytical challenge of finding and applying the doctrine. That is how the students in my Estates and Trusts class "learn the doctrine."

The students' answers from the final exam, in which I ask them to reflect on the process of creating and counseling their client, confirmed that at least for some of them, the creative writing exercise did just that – helped them to learn the doctrine. For example, one student reflected as follows:

I read the casebook with my client in mind. It gave me a frame of

reference for each of the concepts that we studied, which was helpful in understanding the subject matter. My approach to the doctrine became centered on what I thought a real-life situation would look like as opposed to just thinking about the law in the abstract.⁵⁵

For others, the exercise helped them learn the law in more subtle ways, namely through the process of counseling a client. For example:

As time went on, I felt more comfortable with the topic and created creative fact patterns. This allowed me to push myself and be able to provide my client with multiple options on how to help meet his goals.⁵⁶

The course's emphasis on counseling helped me to move beyond the black letter law to think more creatively about how to best use the various estate planning tools.⁵⁷

Thus, the creative writing piece connects concretely to learning the law by requiring students to apply the theory to the practice; and use their imagination and creativity to get there.⁵⁸ The client narrative exercise requires students to do the analytic work necessary to be competent estates and trusts attorneys. I suggest that students think about what lawyers "do" with the doctrine we study. I reiterate that idea during each class. Getting them to imagine a story where they are representing a client simply engaged them in the exercise from a different angle.

As the course has progressed, however, I realized that the exercise provided students the opportunity both to use other important lawyering tools, and to assess their success at using such tools. The most striking and interesting for me is the skill of fact-gathering, or, more explicitly, the essential relationship between facts and doctrine.

At the beginning of each class, I ask for a volunteer to read his or her story for that week, as a framework for us to analyze the doctrine. I write the story on the board in cursory form and then ask the class

⁵⁵ Student 7467, Estates and Trusts Final Examination (Spring 2010) (on file with author).

⁵⁶ Student 8266, Estates and Trusts Final Examination (Spring 2010) (on file with author).

⁵⁷ Student 1234, Estates and Trusts Final Examination (Spring 2010) (on file with author).

⁵⁸ KAREN GALLAS, IMAGINATION AND LITERACY: A TEACHER'S SEARCH FOR THE HEART OF LEARNING 3-4 (2003) (noting that recognition of the critical role imagination plays in learning is not a recent one); John M. Dirkx, *The Power of Feelings: Emotion, Imagination, and the Construction of Meaning in Adult Learning*, 89 NEW DIRECTIONS FOR ADULT & CONTINUING EDUC. 64, 65-70 (2001) (describing the role of emotion in imagination and its connection to adult learning); John M. Dirkx, *Transformative Learning and the Journey of Individuation*, ERIC DIGEST 223 (Ctr on Educ. & Training for Emp't, Columbus, Ohio), 2000, at 2 (discussing transformative education and arguing that educators must "be willing to entertain learning and knowing as imaginative processes").

what more they need to know about the client or her situation in order to answer the questions she presents. During the first few classes, students tend to participate slowly, reluctant perhaps to challenge a fellow student in his/her story-telling, and initially, I find myself filling in gaps instead of asking the students to dig deeper. But as the semester progresses, the “fact-gathering” part of the class gets longer and longer, as students grasp the idea that they cannot offer legal advice in a vacuum, but rather have to understand the context in which the question arose before providing a legal answer.

It is interesting for the students to realize how character and setting and context development helps them figure out how the law applies. The more detailed their imaginary stories were, the more helpful they were as a tool to learn and apply the legal doctrine. Again, the answers to the final exam reflect the truth of these conclusions:⁵⁹

Students reported that, as the semester progressed, they began to understand better the fact-intensive nature of the legal issues presented to them and to ask more questions of their clients. The need to ask more questions arose in large part from students’ improved understanding of doctrine and their developing skill with the “tools” of that doctrine, which in turn sparked additional questions. The more doctrine students studied, the more complex the stories became, with additional and deeper questions required, and the better students took into account not only the client’s wishes but also the impact of those wishes on the circumstances of the client’s loved ones. As a result, the legal advice students provided to their hypothetical clients was clearer and offered more “viable solutions” to the clients’ needs as the semester progressed.

But it turns out that helping students learn the doctrine through imagining and counseling their clients, and showing them the complex interdependence of law and fact are only two of the goals this exercise achieved. Students’ answers to the exam questions described important lessons learned about lawyering, the lawyer-client relationship, and the role of a lawyer:⁶⁰

⁵⁹ See, e.g., Student 1113, Estates and Trusts Final Examination (Spring 2010) (on file with author); Student 2684, Estates and Trusts Final Examination (Spring 2010) (on file with author); Student 3232, Estates and Trusts Final Examination (Spring 2010) (on file with author); Student 4552, Estates and Trusts Final Examination (Spring 2010) (on file with author); Student 7467, Estates and Trusts Final Examination (Spring 2010) (on file with author); Student 8180, Estates and Trusts Final Examination (Spring 2010) (on file with author).

⁶⁰ See, e.g., Student 0067, Estates and Trusts Final Examination (Spring 2010) (on file with author); Student 2634, Estates and Trusts Final Examination (Spring 2010) (on file with author); Student 5677, Estates and Trusts Final Examination (Spring 2010) (on file with author); Student 6342, Estates and Trusts Final Examination (Spring 2010) (on file with author).

Students began to look at the client's goals "in the aggregate," working to ensure that elements of an estate plan worked to effect the client's overall intent. They also gained a deeper understanding of the impact of human behavior and relationships, realizing that knowing a client better allows a lawyer to anticipate that client's concerns, to provide more tailored advice, and to understand the real reason why a client wants to take a particular course of action. In addition, students analyzed problems in novel ways, leading to the consideration of different remedies and underscoring the importance of using a "mixture of tools" in crafting the best solution to a client's problem.

2. *Interview*

Another role-play I do early on, and then refer back to throughout the semester, is a mock interview. I am clear about the goals of the exercise: to get them thinking about the lawyer-client relationship and how it begins; and to introduce the idea of law being important only in the context of the client's facts and goals.

In the role play, each student comes to class prepared to be interviewed as his or her invented client. I then divide the class: 1/3 of the students interview another 1/3, observed by the last 1/3, who report back to the rest of the class about the interview. During debriefing, the students appear hungry for role-specific advice about: client interviewing, dealing with legally incompetent clients, resolving moral/ethical dilemmas, how not to judge your client's goals, and how not to/whether to give your opinion to your client. In that moment, the Estates and Trusts class feels like a mega clinic class on interviewing.

At first I was disconcerted by the students' questions and tempted to deflect those questions. This was not what we were supposed to be talking about in this class. I resisted, however, because the students' questions were exactly what we should have been talking about in this class. If the outcomes of the course were to have the students begin to think about their professional identity as client representatives and to begin being able to "put the law to work" in the context of the lawyer-client relationship, then the interview framework – gathering facts in order to apply the law to them – enhanced our future discussion of the law by providing some concrete facts to work with.

As a class, we developed a fact-law spiral that began with the student/lawyer's openness to imagining her client's story, which leads to good client interviewing about facts, which results in a better un-

derstanding of the client's goals, which brings about more effective counseling and persuasive advocacy, with the end result: better lawyering.

As one student reflected:

The idea of orient[ing] the client interview to the facts, goals, and life circumstances of my client was a[] useful planning guide for me. I returned to this idea throughout the semester when considering the effect of doctrine and estate tools to my client's intentions.⁶¹

Thus, the interview framework – gathering facts in order to apply the law to those facts – enhances our future discussion of the law. We have something concrete to work with. The goal of this exercise is to get the students to think(ing) critically as practitioners and professionals; my means of achieving that outcome is to have them engage in the lawyer-client relationship as professionals. So they are assuming the role of lawyer in order to learn the doctrine that they will then need to use as they assume the role of lawyer. This is the heart of clinical pedagogy.

3. Clinical Methods Achieving Multiple Goals

Throughout the semester, we refer to these two role plays. All of the students' questions about particular doctrine could be analyzed and resolved by reference back to the client interview or the need to gather more facts from the client. The more doctrine the students learn, the more complex their fact-gathering becomes. The more complex their fact-gathering, the more likely they are to elicit a fleshed out client story. The more nuanced and rich their client story, the better able they are to provide meaningful legal advice to their client.

Thus, these clinical methods of role-play/role assumption and reflection help achieve the "non-clinical" goal of teaching students Estates and Trusts doctrine, and the clinical goals of critical thinking about facts, understanding the lawyering process, and beginning to embody professional role.

III. THE PYRAMID OF LEGAL EDUCATION

As we have seen, the goals I have and methods I use in my doctrinal course look and feel very clinical. Indeed, they overlap considerably with the goals I have and methods I use in my Legal Planning Clinic.⁶² So what can we conclude about clinical pedagogy? How

⁶¹ Student 1131, Estates and Trusts Final Examination (Spring 2010) (on file with author).

⁶² For my clinic class, I tell students that the overarching outcome is for them to begin to develop a sense of themselves as independent professionals with responsibilities for

much of what I described in the first section are goals and methods that can be accomplished effectively outside of the traditional in-house clinic? As a corollary: are there goals and methods that can be accomplished effectively only in the traditional in-house clinic? And, what do the answers to these questions mean for the future of the in-house clinic, and, more broadly, the law school curriculum? Part A of this section takes on the first questions; Part B attempts to project into the future.

A. Beyond Skills Training, Revisited

The most obvious difference between the clinic I teach and the doctrinal course I have described is fairly simple. While both courses involve the law of estates and trusts; and both involve consideration of factual context and the relationships between lawyers and clients, in my Estates and Trusts course, the clients are those imagined by my students, or me, or presented in the reading material. In the clinic, the clients are live, real clients. They have come to the clinic with real problems that need fixing, ideally by my students.

This is a difference not lost on students. Indeed, most students who take my clinic have taken some Estates and Trusts course and are able to reflect on the difference between the two courses. Universally, they identify the presence of live clients as the most significant difference. Here are some of the reflections my clinic students made during their mid-semester evaluation meetings:

“I reached out to people with real feelings and needs.”

“It was a different experience, not theoretical, but real.”

“Not as predictable, controllable, can’t take everything into account.”

“Real problems better than hypos; matters to me more to have an answer – more personal, seeing their faces.”

“Client work is rewarding because it matters – helping people who depend on us.”

These reflections indicate that live clients with real problems are important and noteworthy structural differences, but do they matter pedagogically? What do my clinic students gain from being “live” as lawyers, counseling “live” clients, that my Estates and Trusts students do not by acting as lawyers, counseling their imagined clients? What is it about this particular clinical method – real representation of live

their work product, environment and reputation. Sub-outcomes are for them to understand the importance of facts and context, and the relationship between facts and law. Additionally, for them to understand the contours of the lawyer-client relationship, and the different role(s) they might play within that relationship; and for them to know how to recognize and construct narratives within and outside that relationship that serve to further their clients’ goals.

clients with real legal issues – that is so important and compelling for students?

Jerome Frank noted, and Wally Mlyniec reminds us more recently that “new lawyers can[not] be taught in isolation from the clients they serve.”⁶³ Mlyniec goes on to warn that “[i]f lawyers, and thus clinical teachers, are not aware of how human traits and institutional character influence the pursuit of the client’s claims and interests, their expertise in the mechanics of legal skills may be insufficient to maximize their client’s interests.”⁶⁴

Scholars and teachers and our own human instinct tell us that responsibility for another human being, coupled with appropriate supervision and the opportunity for reflection lead to a deeper and richer educational experience. Students make choices more intentionally and thoughtfully because something other than their personal academic success is at stake. They are motivated to learn more thoroughly because whether they get the answer right matters beyond a particular test or grade.

One of the reasons that client-centered clinical representation works is that students are more motivated to learn by being given responsibility over a case, and that this responsibility in turn leads to greater identification with clients and others who are similarly situated.⁶⁵ As Gary Bellow notes, “clinical education offers so much promise for teaching professional responsibility [because] students are implicated in the outcomes of choice.”⁶⁶

In addition to furthering a student’s professional development by forcing him to embody the role of lawyer more authentically, representing the kinds of clients law school clinics serve – namely those who do not have access to other legal services, for the most part – can contribute to the student’s development as a critically thinking socially responsible practitioner. “Serving as an advocate on behalf of a low-income client under good supervision can deepen the student’s understanding and compassion, and cause her to affirm the common humanity she shares with her client and with others in her client’s position.”⁶⁷

Thus, the heart of clinical pedagogy – that which can be learned and taught best, if not exclusively, in the clinic – is participation in the lawyer-client relationship. Specifically, clinic teaches the student that the relationship itself matters. A clinic student is challenged to be

⁶³ Mlyniec, *supra* note 50, at 537.

⁶⁴ *Id.* at 536.

⁶⁵ Wizner, *supra* note 12, at 329–30.

⁶⁶ Bellow, *supra* note 5, at 391.

⁶⁷ Wizner, *supra* note 12, at 328.

aware of and attentive to context at all levels; to be aware of herself and her differences and similarities from and to her clients; to be aware of the client as “other” than herself; and the system in which they both operate as “other” than either of them. The student experiences the presence or absence of boundaries within the relationship, both those that are unspoken and natural, and those that are reflective and planned. And finally, the clinical teacher gets to model with the student the importance of an effective relationship. He gets to teach the student that relationship matters: that it is worthy of notice, capable of deconstruction, and transferable.

B. Reaching the Pinnacle

I found during the planning and execution of the AALS Conference on Clinical Education and Curricular Reform and in the curricular reform discussions taking place since then, that my contributions tended toward integration of clinical goals and methods into traditional curriculum, while maintaining the essence of the in-house, live client clinic as the “gold standard” that all schools should strive toward.

There is no doubt that there is and always will be an important role for the traditional, live-client-based in-house clinic. The question is what role is that, and how should the rest of the curriculum adjust to absorb and deploy clinical methods and goals?⁶⁸

I suggest that the traditional clinic is the pinnacle of the legal education pyramid, and that, as such, the rest of the law school curriculum must build toward it. For example, law schools c/should embed the ideas of social justice and responsibility throughout the curriculum, as part of the essence of preparation for practice of law. The Model Rules of Professional Conduct preamble describes the attorney, after all, as a “public citizen having special responsibility for the quality of justice.”⁶⁹ The law school program should offer multiple opportunities, throughout the curriculum, for students to consider the quality

⁶⁸ It is beyond the scope of this piece to explore the possibility of examining and refining our idea of the “pure” in-house clinic itself. But I suggest that such a modification of the “gold standard” is already happening, so we might as well accept the expansion of the “pure” clinic beyond the litigation model and embrace, for example, mediation and legislation and planning clinics as an integral part of clinical pedagogy. *See generally* Kosuri, *Generational Crossroads*, *supra* note 30 (describing his experiences as a clinician, arguing for an explicit ideological neutrality in clinical education rather than a presumption of an underlying social justice agenda, and stressing the importance of law clinics in providing skills education to law students); Praveen Kosuri, “Impact” in *3D: Maximizing Impact Through Transactional Clinics*, 18 CLINICAL L. REV. 1 (2011) (urging transactional clinicians to assess the service, skills development, and pedagogical dimensions of their clinics to determine those dimensions’ effect on a clinic’s impact strategy).

⁶⁹ MODEL RULES OF PROF’L CONDUCT pmb. 1 (2011).

of justice. The clinical experience would then serve as the capstone experience for a student to act in role as a “public citizen having special responsibility for the quality of justice.”

In a workshop with faculty colleagues on the next phase of outcomes-based pedagogy,⁷⁰ Mary Lynch described two main goals of this kind of teaching and curricular planning: teaching students to exercise professional judgment in action, in the face of all kinds of indeterminacy; and maximizing authentic student learning by recognizing its flexibility, and creating opportunities for transfer.⁷¹ These are fundamentally clinical goals. Mary Lynch recognizes that they can and must be applied across the board, from the beginning of a student’s law school experience until the end.

By starting with clinical goals and methods in the very first classes a student takes, law school professors can create a foundation of learning for transfer in a safe, highly regulated and supervised environment, with little risk of true failure.

At William Mitchell College of Law, for example, the faculty have adopted a new first year curriculum that integrates teaching “skills” with the teaching “doctrine” in every first year course.⁷² At Mitchell and elsewhere, individual faculty members have students second chair or assist them in representing clients in first year core classes.⁷³

⁷⁰ See generally Gregory M. Duhl, *Equipping Our Lawyers: Mitchell’s Outcomes-Based Approach to Legal Education*, 38 WM. MITCHELL L. REV. 906, 917–32 (2012) (discussing the implementation of outcomes-based learning at William Mitchell College of Law); Steven I. Friedland, *Outcomes and the Ownership Conception of Law School Courses*, 38 WM. MITCHELL L. REV. 947 (2012) (analyzing the effect of outcomes-based education on the ownership of law school courses); Deborah Maranville et al., *Lessons for Legal Education from the Engineering Profession’s Experience with Outcomes-Based Accreditation*, 38 WM. MITCHELL L. REV. 1017, 1031–40 (2012) (describing three lessons law school education can learn from outcomes-based programs in engineering); Suellyn Scarnecchia, *Serving the Most Important Constituency: Our Graduates’ Clients*, 36 U. TOL. L. REV. 167 (2004) (arguing for the implementation of outcomes-based education in law school and discussing the practical consequences of its implementation).

⁷¹ Professor Lynch is a clinical professor of law at Albany Law School, director of the Center for Excellence in Law Teaching, and editor of Best Practices in Legal Education Blog, <http://bestpracticeslegaled.albanylawblogs.org>. See Mary A. Lynch, *An Evaluation of Ten Concerns About Using Outcomes in Legal Education*, 38 WM. MITCHELL L. REV. 976 (2012) (addressing the benefits and risks of moving towards an outcomes-based approach).

⁷² Duhl, *supra* note 70, at 918–21; Memorandum from the Curriculum Committee to the Faculty of the William Mitchell Coll. of Law 2–6 (Feb. 1, 2012) (on file with author) (giving feedback from the first installation of the program and recommending full implementation of the program for the 2013–14 academic year).

⁷³ See, e.g., Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum*, 41 U. BALT. L. REV. 395, 412 (2012) (on file with author) (noting New York University’s first-year, simulated lawyering course and encouraging law school administrators to involve clinical faculty in designing simulation-based courses for first-year students).

Students then move to second year courses having built the foundation of the pyramid, understanding that skills/values and doctrine are not severable, but rather intertwined. The building continues as students take simulation-based and practicum courses;⁷⁴ and also traditional doctrinal courses such as my Estates and Trusts class that have incorporated such goals and methods as development of professional identity, role assumption and critical reflection.⁷⁵

This pedagogical spiral of observation _ simulation _ representation includes clinical methods and goals of some kind at every turn. As the student moves through the curriculum, steadily up the pedagogical spiral, she continues folding in her experiences with role assumption and critical thinking and deconstructing the lawyering process. As she does so, her confidence grows, along with her ability to take risks and exercise professional judgment. By the time she gets to the clinic, she is ready to fully assume the role of a [student] lawyer, and embark on live-client representation. The student can focus on what is best taught and learned only in the clinic: actual experience participating in the lawyer-client relationship.

With this model, the foundation and many layers of the pyramid have been built by the time the student gets to the clinic. That means the clinical teacher does not have to build the pyramid in his one semester or year-long clinic. He gets to work with students at a much higher point on Bloom's taxonomy of learning⁷⁶ and is thus free to

⁷⁴ See, e.g., *General Practice: Skills Practicum*, COURSE DESCRIPTIONS, <http://web.wmitchell.edu/students/course-description/?course=8905> (last visited July 21, 2012) (describing the course wherein students, as members of two-student law firms, engage in simulated cases and problems involving a wide range of substantive and procedural law); *Transactions and Settlements*, COURSE DESCRIPTIONS, <http://web.wmitchell.edu/students/course-description/?course=9014> (last visited July 21, 2012) (describing the course wherein students engage in simulations and related written work related to representing clients in negotiating and drafting contracts and settlement agreements).

⁷⁵ Memorandum from Jane Aiken, Assoc. Dean of Clinical Educ. & Pub. Serv., Georgetown Univ. Law Ctr. (2012) (on file with author) (recounting briefly the creation of the school's experiential learning curriculum, outlining the two main models that practicum courses employ, and describing practicum courses offered in the 2012–2013 and 2011–2012 academic years); Georgetown Law Center, Chart of Practicum Courses, 2012–2013 Academic Year (2012) (on file with author) (organizing practicum courses offered by area of law); Georgetown Law Center, Proposal for a Practicum Course, 2012–2013 Academic Year (2012) (on file with author) (requesting that the faculty member provide a detailed description of the proposed class, state the teaching goals for the class, describe how the faculty member will integrate the field work component of the course with the seminar component, and note what opportunities the course will provide for student reflection).

⁷⁶ Bloom's Taxonomy was initially developed in the 1940s and 1950s by a group of college and university examiners looking for a way to classify intended student learning outcomes in order to facilitate the exchange of test questions. LORIN W. ANDERSON & DAVID R. KRATHWOHL, *A TAXONOMY FOR LEARNING, TEACHING, AND ASSESSING: A REVISION OF BLOOM'S Taxonomy of Educational Objectives* xxvii (abr. ed. 2001). The original taxonomy has been expanded and revised since then. *Id.* The 2001 revision con-

focus on those goals and methods best, if not exclusively, used in the clinic – the intricacies of the lawyer-client relationship deconstructed and experienced and reflected upon in real time, in real life. That is true maximization of student learning and clinical pedagogy.

sists of two dimensions, the knowledge dimension and the cognitive process dimension, which can be imagined as a table with the knowledge dimension running vertically down the page and the cognitive process dimension running horizontally along the top. *Id.* at 27–28, 63. The knowledge dimension consists of four types of knowledge: factual, conceptual, procedural, and metacognitive. *Id.* at 27. Each of these knowledge dimensions can be discussed in relation to the cognitive process dimension, which consists of six categories: remember, understand, apply, analyze, evaluate, and create. *Id.* at 28, 67–68.

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